

Tory ballot-rigging threatens democratic right to strike

"Today's Queen's Speech is a speech for working people, from a One Nation government that will bring our country together." David Cameron

The government's 'reform' of trade union law constitutes an anti-democratic ballot rigging proposal designed to undermine the potential power of trades unions and to strengthen the power of employers over their workers.

One of the government's key Bills in the New Parliament is the Trades Unions Bill. The declared purpose of the Bill, according to Minister Sajid Javid, is to "ensure hard-working people are not disrupted by little supported strike action". The legislation is said to seek to ensure that strikes were the result of "clear, positive and recent decisions by union members" giving strikes a "democratic mandate", "minimising disruption for hard working tax payers". The centre-piece of the legislation will be amendment of the balloting regulations, but there are other proposals included which show that the purpose of the Bill has nothing to do with a democratic mandate but is designed to weaken trades unions and give more powers to the employers.

An 80% barrier to action

To be able to take legally protected industrial action under the government's Bill a trade union would have to secure a minimum ballot turn-out of 50% of their members eligible to vote. Additionally in public services a vote in favour of action, of at least 40% of the overall membership (whether they vote or not) will be necessary. So if you ballot 1,000 members you would need a return of at least 500 ballot papers and 400 of those would have to vote for action. A vote of 399 for and 101 against means that you would be barred from taking legally protected industrial action. This means **a threshold of an 80% yes vote** on a 50% turnout is necessary. A 60% turnout would mean you required a 66% Yes vote. *This is nothing other than ballot rigging, counting abstainers as No votes.*

The legislation is clearly designed to make it more difficult to take strike action. No matter how unjust the action of an employer, the thresholds set will mean that workers will be unable to take action within the law unless the threshold is met by a union in a postal ballot.

The right to organise strike breaking

Other proposals which will be included in the Bill underline the anti-union nature of the proposals and the pro-employer stance of this 'one nation' government. It is proposing to

- End the ban introduced by the last government on use of agency staff to work in place of strikers. So as well as making it more difficult to win a strike ballot the Tories are proposing *to enable employers to recruit a strike breaking force external to the actual workforce.*
- Increase the notice of action from one week to two weeks to enable employers more

- time to prepare to undermine the impact of strike action.
- Make illegal picketing a criminal rather than civil offence designed "to better protect those who want to come to work". As the TUC has pointed out a seventh person joining a picket line could mean all seven people being charged with criminal activity. Whilst we don't yet know the penalties which will accompany this change of law it is clearly designed *to intimidate union members* and make them fearful of active participation in strike action.
 - Introduce a three month time limit on action and to specify the detail of action and how long it is expected to take place. This, of course, is difficult to determine at the beginning of any industrial dispute and would add another hurdle against successful industrial action.

The irony of all this is that it is not a response to an epidemic of strike action. The balance of power in the workplace is already overwhelmingly in favour of the employers. There is a climate of fear in the workplace resulting from the absence of or weakness of collective workplace organisation and the growth of precarious employment contracts: zero hours contracts, temporary contracts, bogus 'self-employment' and so on.

The Tories have said that their legislation will ensure that any action has a 'democratic mandate', yet that will not prevent hostility to strikes even if they have an 80% mandate. The media response to the possibility of action by the RMT in Network Rail was not muted by the fact that the ballot result would have passed the proposed threshold for action. Even the Labour supporting Daily Mirror had a front page headed "Five days of rail misery".

The impact of this government proposal will be to seriously undermine the ability of trades unions to defend the interests of their members. The overwhelming majority of strike votes which have taken place over the last five years would have failed to meet the threshold for the public services if these conditions had applied. It would be virtually impossible to win a national ballot in the NHS and local government given the fractured nature of the workforce (vast numbers of different employers) and the weakness of union organisation.

'Democratic mandate'

We are said to live in a democracy. We get a vote every five years which gives us the possibility of changing the government. Yet a government is able to do whatever it wants provided that it holds a majority in the House of Commons. It can, of course, do the opposite of things it promised in a General Election. Hence the last government imposed a top down reorganisation of the NHS having promised 'no more top down reorganisations' and ended secure tenancies for Council tenants having said it had no plans to change tenancies.

This government which won the support of only 24% of the electorate is now proposing to impose thresholds for industrial action ballots which are fundamentally undemocratic and favour the employers. The unrestricted power of a government is enhanced by the 'first past the post' (FPTP) electoral system which delivered a small Parliamentary majority with the votes of only 36.9% of those who voted. Even a Tory grandee like Quentin Hogg warned of the dangers of an 'elective dictatorship' under this system.

The slim electoral majority of the new government was delivered by the undemocratic FPTP system. The government may have a parliamentary 'mandate' of sorts but it certainly doesn't have a popular mandate. A government with the support of only a quarter of the electorate is proposing what is in reality *a ballot rigging system* designed to prevent workers exercising their democratic right to take industrial action to defend their interests and to hand more power to employers. If the proposals relating to balloting for industrial action were applied to parliamentary elections they would have no mandate at all.

"The right of management to manage" which is revered by the Tories and sections of the mass media is nothing less than management dictatorship which is only limited by trade union organisation. Since the trade union 'reforms' of the 1980s the balance of power in the workplace has shifted dramatically in favour of the employers. The introduction by Thatcher of compulsory postal balloting for industrial action was said to be a means of 'handing control of the unions back to their members'. What postal balloting in fact did was *to reduce the participation of members*. The decline of collective organisation, the lack of confidence and a sense of powerlessness has meant that ballot returns are often low. The ineffectiveness of one day strikes has reinforced this trend.

However, the Tories are not concerned with the low level of participation of union members in ballots. If they wanted to increase participation they would not be opposing the trade union proposal to allow members to vote online.

It should also be remembered that the law makes it illegal for trades unions to take action against members who ignore the democratic decisions of union members. It gives them the 'right to work', that is the right to ignore democratic decisions and unions cannot even expel them for refusing to accept democratic decisions of the membership.

What campaign against the Bill?

How will the trades unions campaign against this bill in defence of the democratic right to strike, free of arbitrary limitations? They firstly have to seek to actively mobilise their members who will suffer directly as a consequence of this Bill being passed into law. There needs to be a public campaign which exposes the anti-democratic nature of the proposals which set thresholds which are not applied to parliamentary elections or any other ballots. They should be labelled for what they are, as *ballot rigging in favour of the employers*.

A political campaign will have to be directed at pressuring MPs to vote against the Bill. The Labour Party in particular should be reminded of the fact that its growth in the early days was associated with the Taff Vale judgement which threatened the right to strike by means of bankrupting trades unions, fining them to compensate employers as a result of strike action (see Appendix).

All the Labour leadership candidates should be pressed on this issue and the demand placed on them that Labour will operate a three line whip for all their MPs to vote against the Bill and commit to repealing it if they form a government. It would be a mistake to dismiss this on the grounds that Labour is 'no different to the Tories'. If a Bill is placed before Parliament you have to press all MPs to oppose it, however unlikely. Moreover, so long as the major trades unions remain affiliated to Labour they should demand union

sponsored MP's in particular oppose this attack on the democratic right of union members to strike.

Some unions have indicated that they will challenge the balloting proposals legally as being in breach of the Universal Declarations of Human Rights: that the right to strike is a democratic right. Even if that were successful it would probably be a long process. The legal route cannot be relied on. What is absolutely critical is that the unions involve their members in an active campaign rather than leaving them as mere observers.

Of course, if union members are effectively prevented from taking 'legal' strike action then nobody should be surprised if they walk out of work without balloting. What the Tories are proposing is flagrantly undemocratic. It shows how preposterous is the assertion that they are 'the party of workers'. They are a party of the employers. Their proposals will make it easier for employers to commit every manner of injustice against their employees. It will encourage a fearful workforce which is too frightened to stand up for its rights.

Appendix

The Taff Vale case

The case arose from a strike in August 1900 on the Taff Vale railway in response to the victimisation of a signaller who had led a movement for a pay rise. The management drummed up a strike-breaking force with the help of the so-called National Free Labour Association. The company ordered strikers and their families to vacate rented company properties. A settlement was agreed after eleven days, but despite this the employer continued with its request for an injunction to restrain the ASRS from picketing. The ASRS informed the TUC about the injunction and its implications for other unions. The TUC immediately instructed its Parliamentary Committee to warn all unions of the implications and to raise contributions for an appeal. The ASRS appealed against the injunction and its appeal was upheld in November 1900. However, the management appealed to the House of Lords which in July 1901 found unanimously in favour of the company. As a result the company lodged a claim for damages in December 1901. The ASRS had to pay £42,000 in fines and costs. Without the right to strike free of the threat of damages unions would be rendered completely impotent.

This threat against trade union action gave impetus to the development of the Labour Representation Committee which had been set up in 1900 as a result of a resolution moved by the ASRS at the 1899 TUC conference. Many unions had supported the Liberal Party. However, Taff Vale led to an increase in union affiliations to the LRC and support for its quest for a parliamentary group representing workers.

In the General Election of 1906 fifty candidates pledged to repeal the Taff Vale judgement were put up by the LRC and 29 of them were elected. Twelve others, miners, officially Liberals also supported repeal. The election of so many LRC candidates was partly the result of a secret agreement between Ramsey Macdonald and the Liberals to avoid Labour and Liberals standing against each other.

A majority of the new Liberal Cabinet opposed introducing a law which would give trades

unions immunity from prosecution for damages for industrial action and introduced a bill based on the findings of a Royal Commission of the previous government. Unacceptable to the LRC MP's they introduced a Bill of their own, which, much to the consternation of many was passed with the support even of Campbell-Bannerman a member of the Liberal Cabinet.

Explaining his vote for the trades unionists' Bill Campbell Bannerman said:

"I have never been, and I do not profess to be now, very intimately acquainted with the technicalities of the question, or with the legal points involved in it. The great object was, and still is, to place the two rival powers of Capital and Labour on an equality so that the fight between them, so far as fight is necessary, should at least be a fair one...I always vote on the second reading of a Bill with the understood reservation of details, which are to be considered afterwards. That is the universal practice. Shall I repeat that vote today? (Cries of "Yes".) I do not see any reason under the sun why I should not."

George Dangerfield in his classic book *The Strange Death of Liberal England* wrote that

"It gave the unions an astounding, indeed unlimited immunity. Labour was jubilant. The most powerful Government in history had been compelled, by scarcely more than a single show of power, to yield to the just demands of organised workers."

Despite the differences the parallels with Taff Vale and the Bill which today's new Tory government is proposing to introduce are obvious. Whilst they are not proposing to take make unions liable for strike action they are setting conditions which will make it very difficult to reach such high thresholds, and changing the law to enable employers to recruit a strike breaking force.